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MEMORANDUM

DATE: June 20, 2006

TO: Washington State Public Disclosure Commission
MS: 40908

FROM: Nancy Krier, Senior Assistant Attorney General 
Licensing & Administrative Law Division, MS: 40110

SUBJECT: **Limited Liability Partnerships and Similar Entities and F-1 Filing Forms – Further Discussion; Possible Rulemaking**

At your March 2006 meeting, you were provided background on a question from a candidate and filer regarding limited liability partnerships (LLPs) and reporting requirements for the personal financial affairs statements (PDC F-1 forms) pursuant to RCW 42.17.241(1)(g). The Commission discussed these new business entities such as LLPs, limited liability companies (LLCs), etc. The statute at (1)(g) did not appear to require reporting of these entities.

The Commission then discussed proceeding with rulemaking pursuant to RCW 42.17.241(1)(n) to address reporting of filer information related to these new business structures. That statute at (1)(n) authorizes the Commission to require reporting on the F-1 forms of “such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the commission shall prescribe by rule.” The Commission also has rulemaking authority under RCW 42.17.370(1) to implement RCW 42.17.

At your April 2006 meeting, you further discussed proceeding with rulemaking on this subject. You reviewed your list of current F-1 form rules, which are in chapter 390-24 WAC. Those current rules do not address LLPs, LLCs, and other similar business entities. You discussed proposing a new rule to address LLPs, LLCs and other similar business entities (a new WAC 390-24-XXX). To the extent reporting would be required that is not currently described on the F-1 forms, the forms would also need to be amended (WAC 390-24-010, WAC 390-24-020).

At your June 2006 meeting, you will be asked review a draft proposal for a new rule, WAC 390-24-XXX (number to be designated). Attached is staff’s draft for your review and comment. You will be asked to approve proposed language for submission to the Code Reviser to begin the formal rulemaking process. I will be available at the meeting to answer any questions.

Attachment

***POSSIBLE NEW RULE:**

Brief explanatory statement: RCW 42.17.241(1)(g) requires disclosure on the PDC personal financial affairs statement (F-1 form) of “The name of any corporation, partnership, joint venture, association, union, or other entity in which is held any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship, or partnership; the nature of ownership interest...” Emphasis added. Limited liability partnerships (LLPs), limited liability companies (LLCs), and similar entities are a relatively new development in the options for business entity structures. If a filer does not hold an office, directorship or “general partnership” interest, and if the ownership interest of the filer is below the ten percent level, RCW 42.17.241(1)(g) can be read to not require such disclosure of the interest on the F-1 at this time for these new business entities not listed in RCW 42.17.241(1)(g).

The Commission has the authority under another section of RCW 42.17.241 at subsection (1)(n) to require disclosure on the F-1 of “Such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the commission shall prescribe by rule.” Emphasis added. The Commission also has the authority to adopt rules to implement its statutes in RCW 42.17, per RCW 42.17.370(1). Current F-1 filing rules are in WAC 390-24. Current rules do not address LLPs and similar newer forms of business entities that have become more common since the PDC laws and rules were first adopted.

Draft New Rule:

WAC 390-24-XXX Report of compensation by limited partnerships, limited liability partnerships, limited liability companies, and similar entities. For the purposes of filing financial disclosures required by RCW 42.17.241:

(1) The terms partnership, general partnership, limited partnership, limited liability partnership, and limited liability company as defined in Title 25 RCW will apply.

(2) Persons who have a partnership or membership in limited partnerships, limited liability partnerships, limited liability companies, and similar entities including but not limited to professional limited liability companies, shall file a personal financial affairs form (PDC F-1) as required in RCW 42.17.241, and shall also provide the information described in section (3) of this rule.

(3) A person filing a personal financial affairs statement shall report the name of any limited partnership, limited liability partnership, limited liability company, professional limited liability company, and similar entity in which a partnership or membership is held by the person or member of the person’s immediate family, and any title held. The person shall also report the following:

(a) Regarding a governmental unit in which the filer seeks or holds any office or position, if the entity has received compensation during the preceding twelve months from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; and,

(b) The name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in the amount equal to or greater than the amount specified in WAC 390-24-010 and WAC 390-24-020 (the F-1 reporting forms) during the reporting period and the consideration given or performed in exchange for the compensation.